

**Posted: 10/27/99
2:30 p.m.**

Order 99-10-22



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 27th day of October, 1999

Served: November 1, 1999

Complaint of

UNITED AIR LINES, INC.

against

**THE EUROPEAN COMMISSION
AND NATIONAL IMPLEMENTING
AUTHORITIES**

under 49 U.S.C. § 41310

Docket OST-98-4030

ORDER GRANTING WAIVER

On July 8, 1998, United Air Lines, Inc., filed a complaint under 49 U.S.C. § 41310 against the European Commission (the Commission) and certain European national implementing authorities (the Governments of Germany, Denmark, Norway, and Sweden) (the Commission and these governments are referred to collectively as the Respondents). United argues that sanctions against the Respondents are necessary to redress actions proposed by the Commission against United's alliances with Deutsche Lufthansa AG (Lufthansa) and Scandinavian Airline System (SAS) which will preclude United and its alliance partners from exercising rights specifically provided for under the open-skies aviation agreements between the United States and the individual European countries involved. United argues that such action is essential to ensure the continued viability of the U.S. Government's open-skies policy in Europe.¹

Section 41310 provides that the Department shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the

¹We summarized the complaint more fully in Order 98-7-16, July 27, 1998.

complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

By Order 98-7-16, the Department invited all interested parties to file answers to United's complaint in Docket OST-98-4030. Deutsche Lufthansa AG, Northwest Airlines, Delta Air Lines, Scandinavian Airlines System, American Airlines, the City and County of San Francisco, the City of Chicago and the Metropolitan Washington Airports Authority, and the Economic Strategy Institute filed answers. American and United filed replies. Northwest filed a rejoinder.²

By Orders 98-9-2, 98-10-7, 98-11-5, and 98-12-4 the Department extended, to facilitate a negotiated resolution to the issues raised, the period for taking action on United's complaint to the extent permitted under the statute, *i.e.* through January 4, 1999. By Orders 98-12-35, 99-3-5, 99-6-5, and 99-7-20 the Department granted waivers by United of the statutory deadline through October 27, 1999.

On October 20, 1999, United offered an additional limited waiver of the statutory deadline through January 25, 2000. United notes that it is encouraged by signs that the new European Commission plans to take a fresh look at the issues that led to United's complaint. In this regard, United states that high-level contacts between the U.S. and the Commission are expected over the next few months. To provide additional time for the Commission to continue its review of the issues, and to afford a further opportunity for negotiations to resolve the matter, United states that it agrees to waive the statutory deadline through January 25, 2000.

After careful consideration of United's request and other relevant factors, we believe that the public interest will be best served by granting United's waiver and deferring the deadline for action on the complaint through January 25, 2000.³

ACCORDINGLY,

1. We grant the request of United Air Lines, Inc. for waiver of the statutory deadline in order to defer through January 25, 2000, the period for taking action on its complaint in Docket OST-98-4030; and

2. We will serve this order on Air Transport International LLC; American Airlines, Inc.; Amerijet International, Inc.; Arrow Air, Inc., Challenge Air Cargo, Inc.; Continental Airlines, Inc.;

²Northwest's pleading was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 98-10-7.

³Under the Department's regulations, answers to United's request would not be due until seven business days after its filing, *i.e.* October 29, 1999. As that would be after expiration of the current deadline, October 27, 1999, we have decided to act on United's request without awaiting expiration of the period for answers. Should any additional answers be filed, we will address them in a subsequent order.

Delta Air Lines, Inc.; DHL Airways, Inc.; Economic Strategy Institute; Emery Worldwide Airlines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Northwest Airlines, Inc.; Polar Air Cargo, Inc.; Tower Air, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; United Parcel Service Company; US Airways, Inc.; World Airways, Inc.; Lufthansa German Airlines; Condor Flugdienst; Scandinavian Airlines System; Scanair; Maersk Air; Blue Scandinavia AB; PremiAir A/S; Nova Airlines, AB; Deutsche BA Luftfahrtgesellschaft mbH; Eurowings Luftverkehrs AB; Hapag-Lloyd Fluggesellschaft; Lufthansa Cargo, AG; Transwede Airways AB; LTU Lufttransport-Unternehmen GmbH; Britannia Airways; Sterling; Air Sweden; Finnair Oy; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, Norway, Denmark, and Sweden in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U. S. Trade Representative (Office of the United States Trade Representative); the U.S. Department of Commerce (Office of Service Industries); the Air Transport Association; the National Air Carrier Association, Inc.; the City and County of San Francisco; and the City of Chicago and the Metropolitan Washington Airports Authority.

By:

A. BRADLEY MIMS

Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
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